

# **PART 17--DRAWBACK ON TAXPAID DISTILLED SPIRITS USED IN MANUFACTURING NONBEVERAGE PRODUCTS**

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AUTHORITY: 26 U.S.C. 5010, 5131-5134, 5143, 5146, 5206, 5273, 6011, 6065, 6091, 6109, 6151, 6402, 6511, 7011, 7213, 7652, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

SOURCE: T.D. ATF-379, 61 FR 31412, June 20, 1996, unless otherwise noted.

## **Subpart A--General Provisions**

### **§17.1 Scope of regulations.**

The regulations in this part apply to the manufacture of medicines, medicinal preparations, food products, flavors, flavoring extracts, and perfume that are unfit for beverage use and are made with taxpaid distilled spirits. The regulations cover the following topics: obtaining drawback of internal revenue tax on distilled spirits used in the

manufacture of nonbeverage products; the payment of special (occupational) taxes in order to be eligible to receive drawback; and bonds, claims, formulas and samples, losses, and records to be kept pertaining to the manufacture of nonbeverage products.

### **§17.2 Forms prescribed.**

(a) The appropriate ATF officer is authorized to prescribe all forms, including bonds and records, required by this part. All of the information called for in each form shall be furnished as indicated by the headings on the form and the instructions on or pertaining to the form. In addition, information called for in each form shall be furnished as required by this part. The form will be filed in accordance with the instructions for the form.

(b) Forms may be requested from the ATF Distribution Center, P.O. Box 5950, Springfield, Virginia 22150-5190, or at the ATF web site (<http://www.atf.treas.gov/>).

[T.D. ATF-379, 61 FR 31412, June 20, 1996 as amended by T.D. ATF-436, 66 FR 5470, Jan. 19, 2001]

### **§17.3 Alternate methods or procedures.**

#### **(a) *General.***

The appropriate ATF officer may approve the use of an alternate method or procedure in lieu of a method or procedure prescribed in this part if he or she finds that--

- (1) Good cause has been shown for the use of the alternate method or procedure;
- (2) The alternate method or procedure is within the purpose of, and consistent with the effect intended by, the method or procedure prescribed by this part, and affords equivalent security to the revenue; and
- (3) The alternate method or procedure will not be contrary to any provision of law, and will not result in any increase in cost to the Government or hinder the effective administration of this part.

#### **(b) *Application.***

Application. A letter of application to employ an alternate method or procedure must be submitted to the appropriate ATF officer. The application shall specifically describe the proposed alternate method or procedure, and shall set forth the reasons therefor.

#### **(c) *Approval.***

No alternate method or procedure shall be employed until the application has been approved by the appropriate ATF officer. The appropriate ATF officer shall not approve any alternate method relating to the giving of any bond or to the assessment, payment, or collection of any tax. The manufacturer shall, during the period of authorization, comply with the terms of the approved application and with any conditions thereto stated by the appropriate ATF officer in the approval. Authorization for any alternate method or procedure may be withdrawn by written notice from the appropriate ATF officer whenever in his or her judgment the revenue

is jeopardized, the effective administration of this part is hindered, or good cause for the authorization no longer exists. The manufacturer shall retain, in the records required by §17.170, any authorization given by the appropriate ATF officer under this section.

[T.D. ATF-379, 61 FR 31412, June 20, 1996 as amended by T.D. ATF-436, 66 FR 5470, Jan. 19, 2001]

#### **§17.4 OMB control numbers assigned under the Paperwork Reduction Act.**

(a) *Purpose.*

This section collects and displays the control numbers assigned to the information collection requirements of this part by the Office of Management and Budget under the Paperwork Reduction Act of 1980, Public Law 96-511.

(b) *OMB control number 1512-0078.*

OMB control number 1512-0078 is assigned to the following section in this part: §17.106.

(c) *OMB control number 1512-0079.*

OMB control number 1512-0079 is assigned to the following sections in this part: §§17.6 and 17.105.

(d) *OMB control number 1512-0095.*

OMB control number 1512-0095 is assigned to the following sections in this part: §§17.121, 17.126, 17.127, 17.132, and 17.136.

(e) *OMB control number 1512-0141.*

OMB control number 1512-0141 is assigned to the following sections in this part: §§17.92, 17.93, 17.142, 17.145, and 17.146.

(f) *OMB control number 1512-0188.*

OMB control number 1512-0188 is assigned to the following section in this part: §17.6.

(g) *OMB control number 1512-0378.*

OMB control number 1512-0378 is assigned to the following sections in this part: §§17.3, 17.54, 17.111, 17.112, 17.122, 17.123, 17.124, 17.125, 17.143, 17.168(a), 17.183, and 17.187.

(h) *OMB control number 1512-0379.*

OMB control number 1512-0379 is assigned to the following sections in this part: §§17.161, 17.162, 17.163, 17.164, 17.165, 17.166, 17.167, 17.168(b), 17.169, 17.170, 17.182, and 17.186.

(i) *OMB control number 1512-0472.*

OMB control number 1512-0472 is assigned to the following sections in this part: §§17.31, 17.32, 17.33, 17.34, 17.41, 17.53, 17.61, 17.63, 17.71, and 17.74.

(j) *OMB control number 1512-0492.*

OMB control number 1512-0492 is assigned to the following sections in this part: §§17.42, 17.43, 17.52, and 17.55.

(k) *OMB control number 1512-0500.*

OMB control number 1512-0500 is assigned to the following sections in this part: §§17.31, 17.32, 17.33, 17.34, 17.41, and 17.53.

(l) *OMB control number 1512-0514.*

OMB control number 1512-0514 is assigned to the following sections in this part: §§17.147 and 17.182.

### **§17.5 Products manufactured in Puerto Rico or the Virgin Islands.**

For additional provisions regarding drawback on distilled spirits contained in medicines, medicinal preparations, food products, flavors, flavoring extracts, or perfume which are unfit for beverage purposes and which are brought into the United States from Puerto Rico or the U.S. Virgin Islands, see part 250, subparts I and Ob, of this chapter.

### **§17.6 Signature authority.**

No claim, bond, tax return, or other required document executed by a person as an agent or representative is acceptable unless a power of attorney or other proper notification of signature authority has been filed with the ATF office where the required document must be filed. The appropriate ATF officer with whom the claim or other required document is filed may, when he or she considers it necessary, require additional evidence of the authority of the agent or representative to execute the document. Except as otherwise provided by this part, powers of attorney shall be filed on ATF Form 1534 (5000.8), Power of Attorney. Notification of signature authority of partners, officers, or employees may be given by filing a copy of corporate or partnership documents, minutes of a meeting of the board of directors, etc. For corporate officers or employees, ATF Form 5100.1, Signing Authority for Corporate Officials, may be used. For additional provisions regarding powers of attorney, see §17.105 and 26 CFR part 601, subpart E.

[T.D. ATF-379, 61 FR 31412, June 20, 1996 as amended by T.D. ATF-436, 66 FR 5470, Jan. 19, 2001]

### **§17.7 Delegations of the Director.**

The regulatory authorities of the Director contained in this part 17 are delegated to appropriate ATF officers. These ATF officers are specified in ATF Order 1130.13, Delegation Order--Delegation of the Director's Authorities in 27 CFR parts 17 and 18. ATF delegation orders, such as ATF Order 1130.13, are available to any interested person by mailing a request to the ATF Distribution Center, P.O. Box 5950, Springfield, VA 22150-5190, or by accessing the ATF web site (<http://www.atf.treas.gov/>).

[T.D. ATF-436, 66 FR 5470, Jan. 19, 2001]

## **Subpart B--Definitions**

### **§17.11 Meaning of terms.**

As used in this part, unless the context otherwise requires, terms have the meanings given in this section. Words in the plural form include the singular, and vice versa, and words indicating the masculine gender include the feminine. The terms "includes" and "including" do not exclude things not listed which are in the same general class.

*Appropriate ATF Officer.* An officer or employee of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any functions relating to the administration or enforcement of this part by ATF Order 1130.13, Delegation Order--Delegation of the Director's Authorities in 27 CFR Parts 17 and 18.

*Approved, or approved for drawback.* When used with reference to products and their formulas, this term means that drawback may be claimed on eligible spirits used in such products in accordance with this part.

*CFR.* The Code of Federal Regulations.

*Director.* The Director, Bureau of Alcohol, Tobacco and Firearms, the Department of Treasury, Washington, DC 20226.

*Distilled spirits, or spirits.* That substance known as ethyl alcohol, ethanol, spirits, or spirits of wine in any form (including all dilutions and mixtures thereof, from whatever source or by whatever process produced).

*Effective tax rate.* The net tax rate, after reduction for any credit allowable under 26 U.S.C. 5010 for wine and flavor content, at which the tax imposed on distilled spirits by 26 U.S.C. 5001 or 7652 is paid or determined. For distilled spirits with no wine or flavors content, the effective tax rate equals the rate of tax imposed by 26 U.S.C. 5001 or 7652.

*Eligible, or eligible for drawback.* When used with reference to spirits, this term designates taxpaid spirits which have not yet been used in nonbeverage products.

*Filed.* Subject to the provisions of §§70.305 and 70.306 of this chapter, a claim for drawback or other document or payment submitted under this part is generally considered to have been "filed" when it is received by the office of the proper Government official; but if an item is mailed timely with postage prepaid, then the United States postmark date is treated as the date of filing.

*Food products.* Includes food adjuncts, such as preservatives, emulsifying agents, and food colorings, which are manufactured and used, or sold for use, in food.

*Intermediate products.* Products to which all three of the following conditions apply: they are made with taxpaid distilled spirits, they have been disapproved for drawback, and they are made by the manufacturer exclusively for its own use in the manufacture of nonbeverage products approved for drawback. However, ingredients treated as unfinished nonbeverage products under §17.127 are not considered to be intermediate products.

*Medicines.* Includes laboratory stains and reagents for use in medical diagnostic procedures.

*Month.* A calendar month.

*Nonbeverage products.* Medicines, medicinal preparations, food products, flavors,



flavoring extracts, or perfume, which are manufactured using taxpaid distilled spirits, and which are unfit for use for beverage purposes.

*Person.* An individual, trust, estate, partnership, association, company, or corporation.

*Proof gallon.* A gallon of liquid at 60 degrees Fahrenheit, which contains 50 percent by volume of ethyl alcohol having a specific gravity of 0.7939 at 60 degrees Fahrenheit (referred to water at 60 degrees Fahrenheit as unity), or the alcoholic equivalent thereof.

*Quarter.* A 3-month period beginning January 1, April 1, July 1, or October 1.

*Recovered spirits.* Taxpaid spirits that have been salvaged, after use in the manufacture of a product or ingredient, so that the spirits are reusable.

*Special tax.* The special (occupational) tax on manufacturers of nonbeverage products, imposed by 26 U.S.C. 5131.

*Subject to drawback.* This term is used with reference to spirits. Eligible spirits become "subject to drawback" when they are used in the manufacture of a nonbeverage product. When spirits have become "subject to drawback," they may be included in the manufacturer's claim for drawback of tax covering the period in which they were first used.

*Tax year.* The period from July 1 of one calendar year through June 30 of the following year.

*Taxpaid.* When used with respect to distilled spirits, this term shall mean that all taxes imposed on such spirits by 26 U.S.C. 5001 or 7652 have been determined or paid as provided by law.

*This chapter.* Chapter I of title 27 of the Code of Federal Regulations.

*U.S.C.* The United States Code.

[T.D. ATF-379, 61 FR 31412, June 20, 1996 as amended by T.D. ATF-436, 66 FR 5470, Jan. 19, 2001]

## **Subpart C--Special Tax**

### **§17.21 Payment of special tax.**

Each person who uses taxpaid distilled spirits in the manufacture or production of nonbeverage products shall pay special tax as specified in §17.22 in order to be eligible to receive drawback on the spirits so used. Special tax shall be paid for each tax year during which spirits were used in the manufacture of a product covered by a drawback claim. If a claim is filed covering taxpaid distilled spirits used during the preceding tax year, and special tax has not been paid for the preceding tax year, then special tax for the preceding tax year shall be paid. Regardless of the portion of a tax year covered by a claim, the full annual special tax shall be paid. The manufacturer is not required to pay the special tax if drawback is not claimed.

### **§17.22 Rate of special tax.**

Effective January 1, 1988, the rate of special tax is \$500 per tax year for all persons claiming drawback on distilled spirits used in the manufacture or production of

nonbeverage products.

### **§17.23 Special tax for each place of business.**

A separate special tax shall be paid for each place where distilled spirits are used in the manufacture or production of nonbeverage products, except for any such place in a tax year for which no claim is filed, or no drawback is paid, on spirits used at that place.

### **§17.24 Time for payment of special tax.**

Special tax may be paid in advance of actual use of distilled spirits. Special tax shall be paid before a claimant may receive drawback. Special tax may be paid without penalty under 26 U.S.C. 5134(c) at any time prior to completion of final action on the claim.

## **Special Tax Returns**

### **§17.31 Filing of return and payment of special tax.**

Special tax shall be paid by return. The prescribed return is ATF Form 5630.5, Special Tax Registration and Return. Special tax returns, with payment of tax, shall be filed with ATF in accordance with instructions on the form.

(26 U.S.C. 609I, 6151)

### **§17.32 Completion of ATF Form 5630.5.**

#### **(a) *General.***

All of the information called for on Form 5630.5 shall be provided, including:

- (1) The true name of the taxpayer.
- (2) The trade name(s) (if any) of the business(es) subject to special tax.
- (3) The employer identification number (see §§17.41-43).
- (4) The exact location of the place of business, by name and number of building or street, or if these do not exist, by some description in addition to the post office address. In the case of one return for two or more locations, the address to be shown shall be the taxpayer's principal place of business (or principal office, in the case of a corporate taxpayer).
- (5) The class of special tax to which the taxpayer is subject.
- (6) Ownership and control information: The name, position, and residence address of every owner of the business and of every person having power to control its management and policies with respect to the activity subject to special tax. "Owner of the business" shall include every partner if the taxpayer is a partnership, and every person owning 10% or more of its stock if the taxpayer is a corporation. However, the ownership and control information required by this paragraph need not be stated if the same information has been previously provided to ATF, and if the information previously provided is still current.

#### **(b) *Multiple locations.***

A taxpayer subject to special tax for the same period at more than one location or

for more than one class of tax shall--

(1) File one special tax return, ATF Form 5630.5, with payment of tax, to cover all such locations and classes of tax; and

(2) Prepare, in duplicate, a list identified with the taxpayer's name, address (as shown on the Form 5630.5), employer identification number, and period covered by the return. The list shall show, by States, the name, address, and tax class of each location for which special tax is being paid. The original of the list shall be filed with ATF in accordance with instructions on the return, and the copy shall be retained at the taxpayer's principal place of business (or principal office, in the case of a corporate taxpayer) for the period specified in §17.170.

(26 U.S.C. 6011, 7011)

### **§17.33 Signature on returns, ATF Form 5630.5.**

The return of an individual proprietor shall be signed by the proprietor; the return of a partnership shall be signed by a general partner; and the return of a corporation shall be signed by a corporate officer. All signatures must be original; photocopies are not acceptable. In each case, the person signing the return shall designate his or her capacity, as "individual owner," "member of partnership," or, in the case of a corporation, the title of the officer. Receivers, trustees, assignees, executors, administrators, and other legal representatives who continue the business of a bankrupt, insolvent, deceased person, etc., shall indicate the fiduciary capacity in which they act.

### **§17.34 Verification of returns.**

ATF Forms 5630.5 shall contain or be verified by a written declaration that the return is made under the penalties of perjury.

(68A Stat. 749 (26 U.S.C. 6065))

## **Employer Identification Number**

### **§17.41 Requirement for employer identification number.**

The employer identification number (defined in 26 CFR 301.7701-12) of the taxpayer who has been assigned such a number shall be shown on each special tax return (ATF Form 5630.5), including amended returns filed under this subpart. Failure of the taxpayer to include the employer identification number on Form 5630.5 may result in assertion and collection of the penalty specified in §70.113 of this chapter.

(Secs. 1(a), (b), Pub. L. 87-397, 75 Stat. 828 (26 U.S.C. 6109, 6723))

### **§17.42 Application for employer identification number.**

(a) An employer identification number is assigned pursuant to application on IRS Form SS-4, Application for Employer Identification Number, filed by the taxpayer. Form SS-4 may be obtained from any office of the Internal Revenue Service.

(b) Each taxpayer who files a return on ATF Form 5630.5 shall make application on IRS Form SS-4 for an employer identification number, unless he or she has already been assigned such a number or made application for one. The application on Form SS-4 shall be filed on or before the seventh day after the date on which the first

return on Form 5630.5 is filed.

(c) Each taxpayer shall make application for and shall be assigned only one employer identification number, regardless of the number of places of business for which the taxpayer is required to file Form 5630.5.

(Sec. 1(a), Pub. L. 87-397, 75 Stat. 828 (26 U.S.C. 6109))

### **§17.43 Preparation and filing of Form SS-4.**

The taxpayer shall prepare and file the application on IRS Form SS-4, together with any supplementary statement, in accordance with instructions on the form or issued in respect to it.

(Sec. 1(a), Pub. L. 87-397, 75 Stat. 828 (26 U.S.C. 6109))

## **Subpart D--Special Tax Stamps**

### **§17.51 Issuance of stamps.**

Each manufacturer of nonbeverage products, upon filing a properly executed return on ATF Form 5630.5, together with the proper tax payment in the full amount due, shall be issued a special tax stamp designated "Manufacturer of Nonbeverage Products." This special tax stamp shall not be sold or otherwise transferred to another person (except as provided in §§17.71 and 17.72). If the Form 5630.5 submitted with the tax payment covers multiple locations, the taxpayer shall be issued one appropriately designated stamp for each location listed in the attachment to Form 5630.5 required by §17.32(b)(2), but showing, as to name and address, only the name of the taxpayer and the address of the taxpayer's principal place of business (or principal office in the case of a corporate taxpayer).

### **§17.52 Distribution of stamps for multiple locations.**

On receipt of the special tax stamps, the taxpayer shall verify that a stamp has been obtained for each location listed on the retained copy of the attachment to ATF Form 5630.5 required by §17.32(b)(2). The taxpayer shall designate one stamp for each location and shall type on it the trade name (if different from the name in which the stamp was issued) and address of the business conducted at the location for which the stamp is designated. The taxpayer shall then forward each stamp to the place of business designated on the stamp.

### **§17.53 Correction of errors on stamps.**

#### **(a) *Single location.***

On receipt of a special tax stamp, the taxpayer shall examine it to ensure that the name and address are correctly stated. If an error has been made, the taxpayer shall return the stamp to ATF at the address shown thereon, with a statement showing the nature of the error and setting forth the proper name or address. On receipt of the stamp and statement, the data shall be compared with that on ATF Form 5630.5, and if an error on the part of ATF has been made, the stamp shall be corrected and returned to the taxpayer. If the Form 5630.5 agrees with the data on the stamp, the taxpayer shall be required to file a new Form 5630.5, designated "Amended Return," disclosing the proper name and address.

(b) *Multiple locations.*

If an error is discovered on a special tax stamp obtained under the provisions of §17.32(b), relating to multiple locations, and if the error concerns any of the information contained in the attachment to Form 5630.5, the taxpayer shall return the stamp, with a statement showing the nature of the error and the correct data, to his or her principal office. The data on the stamp shall then be compared with the taxpayer's copy of the attachment to Form 5630.5, retained at the principal office. If the error is in the name and address and was made by the taxpayer, the taxpayer shall correct the stamp and return it to the designated place of business. If the error was made in the attachment to Form 5630.5, the taxpayer shall file with ATF an amended Form 5630.5 and an amended attachment with a statement showing the error.

**§17.54 Lost or destroyed stamps.**

If a special tax stamp is lost or accidentally destroyed, the taxpayer shall immediately notify the appropriate ATF officer. On receipt of this notification, the appropriate ATF officer shall issue to the taxpayer a "Certificate in Lieu of Lost or Destroyed Special Tax Stamp." The taxpayer shall keep the certificate available for inspection in the same manner as prescribed for a special tax stamp in §17.55.

[T.D. ATF-379, 61 FR 31412, June 20, 1996 as amended by T.D. ATF-436, 66 FR 5471, Jan. 19, 2001]

**§17.55 Retention of special tax stamps.**

Taxpayers shall keep their special tax stamps at the place of business covered thereby for the period specified in §17.170, and shall make them available for inspection by any appropriate ATF officer during business hours.

(Title II, sec. 201, Pub. L. 85-859, 72 Stat. 1348 (26 U.S.C. 5146))

[T.D. ATF-379, 61 FR 31412, June 20, 1996 as amended by T.D. ATF-436, 66 FR 5470, Jan. 19, 2001]

**Change in Location**

**§17.61 General.**

A manufacturer who, during a tax year for which special tax has been paid, moves its place of manufacture to a place other than that specified on the related special tax stamp, shall register the change with ATF within 90 days after the move to the new premises, by executing a new return on ATF Form 5630.5, designated as "Amended Return." This Amended Return shall set forth the time of the move and the address of the new location. The taxpayer shall also submit the special tax stamp to ATF, for endorsement of the change in location.

(Title II, sec. 201, Pub. L. 85-859, 72 Stat. 1374 (26 U.S.C. 5143))

**§17.62 Failure to register.**

A manufacturer who fails to register a change of location with ATF, as required by §17.61, shall pay a new special tax for the new location if a claim for drawback is filed on distilled spirits used at the new location during the tax year for which the original special tax was paid.

### **§17.63 Certificates in lieu of lost stamps.**

The provisions of §§17.61 and 17.62 apply to certificates issued in lieu of lost or destroyed special tax stamps.

## **Change in Control**

### **§17.71 General.**

Certain persons, other than the person who paid the special tax, may qualify for succession to the same privileges granted by law to the taxpayer, to cover the remainder of the tax year for which the special tax was paid. Those who may qualify are specified in §17.72. To secure these privileges, the successor or successors shall file with ATF, within 90 days after the date on which the successor or successors assume control, a return on ATF Form 5630.5, showing the basis of the succession.

### **§17.72 Right of succession.**

Under the conditions set out in §17.71, persons listed below have the right of succession:

- (a) The surviving spouse or child, or executor, administrator, or other legal representative of a taxpayer.
- (b) A husband or wife succeeding to the business of his or her living spouse.
- (c) A receiver or trustee in bankruptcy, or an assignee for the benefit of creditors.
- (d) The members of a partnership remaining after the death or withdrawal of a general partner.

### **§17.73 Failure to register.**

A person eligible for succession to the privileges of a taxpayer, in accordance with §§17.71 and 17.72, who fails to register the succession with ATF, as required by §17.71, shall pay a new special tax if a claim for drawback is filed on distilled spirits used by the successor during the tax year for which the original special tax was paid.

### **§17.74 Certificates in lieu of lost stamps.**

The provisions of §§17.71-73 apply to certificates issued in lieu of lost or destroyed special tax stamps.

### **§17.75 Formation of partnership or corporation.**

If one or more persons who have paid special tax form a partnership or corporation, as a separate legal entity, to take over the business of manufacturing nonbeverage products, the new firm or corporation shall pay a new special tax in order to be eligible to receive drawback.

### **§17.76 Addition or withdrawal of partners.**

- (a) *General partners.*

When a business formed as a partnership, subject to special tax, admits one or

more new general partners, the new partnership shall pay a new special tax in order to be eligible to receive drawback. Withdrawal of general partners is covered by §17.72(d).

(b) *Limited partners.*

Changes in the membership of a limited partnership requiring amendment of the certificate but not dissolution of the partnership are not changes that incur liability to additional special tax.

### **§17.77 Reincorporation.**

When a new corporation is formed to take over and conduct the business of one or more corporations that have paid special tax, the new corporation shall pay special tax and obtain a stamp in its own name.

### **Change in Name or Style**

#### **§17.81 General.**

A person who paid special tax is not required to pay a new special tax by reason of a mere change in the trade name or style under which the business is conducted, nor by reason of a change in management which involves no change in the proprietorship of the business.

#### **§17.82 Change in capital stock.**

A new special tax is not required by reason of a change of name or increase in the capital stock of a corporation, if the laws of the State of incorporation provide for such changes without creating a new corporation.

#### **§17.83 Sale of stock.**

A new special tax is not required by reason of the sale or transfer of all or a controlling interest in the capital stock of a corporation.

### **Refund of Special Tax**

#### **§17.91 Absence of liability, refund of special tax.**

The special tax paid may be refunded if it is established that the taxpayer did not file a claim for drawback for the period covered by the special tax stamp. If a claim for drawback is filed, the special tax may be refunded if no drawback is paid or allowed for the period covered by the stamp.

#### **§17.92 Filing of refund claim.**

Claim for refund of special tax must be filed on ATF Form 2635 (5620.8), Claim--Alcohol, Tobacco and Firearms Taxes. The claim must set forth in detail sufficient reasons and supporting facts of the exact basis of the claim. The claim shall set forth in detail sufficient reasons and supporting facts to inform the regional director (compliance) of the exact basis of the claim. The special tax stamp shall be attached to the claim.

(68A Stat. 791 (26 U.S.C. 6402))



### **§17.93 Time limit for filing refund claim.**

A claim for refund of special tax shall not be allowed unless filed within three years after the payment of the tax.

(68A Stat. 808 (26 U.S.C. 6511))

## **Subpart E--Bonds and Consents of Sureties**

### **§17.101 General.**

A bond shall be filed by each person claiming drawback on a monthly basis. Persons who claim drawback on a quarterly basis are not required to file bonds. Bonds shall be prepared and executed on ATF Form 5154.3, Bond for Drawback Under 26 U.S.C. 5131, in accordance with the provisions of this part and the instructions printed on the form. The bond requirement of this part shall be satisfied either by bonds obtained from authorized surety companies or by deposit of collateral security. Appropriate ATF officers are authorized to approve all bonds and consents of surety required by this part.

[T.D. ATF-379, 61 FR 31412, June 20, 1996 as amended by T.D. ATF-436, 66 FR 5471, Jan. 19, 2001]

### **§17.102 Amount of bond.**

The bond shall be a continuing one, in an amount sufficient to cover the total drawback to be claimed on spirits used during any quarter. However, the amount of any bond shall not exceed \$200,000 nor be less than \$1,000.

### **§17.103 Bonds obtained from surety companies.**

(a) The bond may be obtained from any surety company authorized by the Secretary of the Treasury to be a surety on Federal bonds. Surety companies so authorized are listed in the current revision of Department of the Treasury Circular 570 (Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies), and subject to such amendatory circulars as may be issued from time to time. Bonds obtained from surety companies are also governed by the provisions of 31 U.S.C. 9304, and 31 CFR part 223.

(b) A bond executed by two or more surety companies shall be the joint and several liability of the principal and the sureties; however, each surety company may limit its liability, in terms upon the face of the bond, to a definite, specified amount. This amount shall not exceed the limitations prescribed for each surety company by the Secretary, as stated in Department of the Treasury Circular 570. If the sureties limit their liability in this way, the total of the limited liabilities shall equal the required amount of the bond.

(c) Department of the Treasury Circular No. 570 is published in the FEDERAL REGISTER annually on the first workday in July. As they occur, interim revisions of the circular are published in the FEDERAL REGISTER. Copies of the circular may be obtained from: Surety Bond Branch, Financial Management Service, Department of the Treasury, Washington, DC 20227.

(Sec. 1, Pub. L. 97-258, 96 Stat. 1047 (31 U.S.C. 9304))

### **§17.104 Deposit of collateral.**



Except as otherwise provided by law or regulations, bonds or notes of the United States, or other obligations which are unconditionally guaranteed as to both interest and principal by the United States, may be pledged and deposited by principals as collateral security in lieu of bonds obtained from surety companies. Deposit of collateral security is governed by the provisions of 31 U.S.C. 9303, and 31 CFR part 225.

(Sec. 1, Pub. L. 97-258, 96 Stat. 1046 (31 U.S.C. 9301, 9303))

#### **§17.105 Filing of powers of attorney.**

(a) *Surety companies.*

The surety company shall prepare and submit with each bond, and with each consent to changes in the terms of a bond, a power of attorney in accordance with §17.6, authorizing the agent or officer who executed the bond or consent to act in this capacity on behalf of the surety. The power of attorney shall be prepared on a form provided by the surety company and executed under the corporate seal of the company. If other than a manually signed original is submitted, it shall be accompanied by certification of its validity.

(b) *Principal.*

The principal shall execute and file a power of attorney, in accordance with §17.6, for every person authorized to execute bonds on behalf of the principal.

(Sec. 1, Pub. L. 97-258, 96 Stat. 1047 (31 U.S.C. 9304, 9306))

[T.D. ATF-379, 61 FR 31412, June 20, 1996 as amended by T.D. ATF-436, 66 FR 5471, Jan. 19, 2001]

#### **§17.106 Consents of surety.**

The principal and surety shall execute on ATF Form 1533 (5000.18), Consent of Surety, any consents of surety to changes in the terms of bonds. Form 1533 (5000.18) shall be executed with the same formality and proof of authority as is required for the execution of bonds.

#### **§17.107 Strengthening bonds.**

Whenever the amount of a bond on file and in effect becomes insufficient, the principal may give a strengthening bond in a sufficient amount, provided the surety is the same as on the bond already on file and in effect; otherwise a superseding bond covering the entire liability shall be filed. Strengthening bonds, filed to increase the bond liability of the surety, shall not be construed in any sense to be substitute bonds, and the appropriate ATF officer shall not approve a strengthening bond containing any notation which may be interpreted as a release of any former bond or as limiting the amount of either bond to less than its full amount.

[T.D. ATF-379, 61 FR 31412, June 20, 1996 as amended by T.D. ATF-436, 66 FR 5471, Jan. 19, 2001]

#### **§17.108 Superseding bonds.**

(a) The principal on any bond filed pursuant to this part may at any time replace it with a superseding bond.

(b) Executors, administrators, assignees, receivers, trustees, or other persons acting in a fiduciary capacity continuing or liquidating the business of the principal, shall

execute and file a superseding bond or obtain the consent of the surety or sureties on the existing bond or bonds.

(c) When, in the opinion of the appropriate ATF officer, the interests of the Government demand it, or in any case where the security of the bond becomes impaired in whole or in part for any reason whatever, the principal shall file a superseding bond. A superseding bond shall be filed immediately in case of the insolvency of the surety. If a bond is found to be not acceptable or for any reason becomes invalid or of no effect, the principal shall immediately file a satisfactory superseding bond.

(d) A bond filed under this section to supersede an existing bond shall be marked by the obligors at the time of execution, "Superseding Bond." When such a bond is approved, the superseded bond shall be released as to transactions occurring wholly subsequent to the effective date of the superseding bond, and notice of termination of the superseded bond shall be issued, as provided in §17.111.

[T.D. ATF-379, 61 FR 31412, June 20, 1996 as amended by T.D. ATF-436, 66 FR 5471, Jan. 19, 2001]

## **Termination of Bonds**

### **§17.111 General.**

(a) Bonds on ATF Form 5154.3 shall be terminated by the appropriate ATF officer, as to liability on drawback allowed after a specified future date, in the following circumstances:

(1) Pursuant to a notice by the surety as provided in §17.112.

(2) Following approval of a superseding bond, as provided in §17.108.

(3) Following notification by the principal of an intent to discontinue the filing of claims on a monthly basis.

(b) However, the bond shall not be terminated until all outstanding liability under it has been discharged. Upon termination, the appropriate ATF officer shall mark the bond "canceled," followed by the date of cancellation, and shall issue a notice of termination of bond. A copy of this notice shall be given to the principal and to each surety.

[T.D. ATF-379, 61 FR 31412, June 20, 1996 as amended by T.D. ATF-436, 66 FR 5471, Jan. 19, 2001]

### **§17.112 Notice by surety of termination of bond.**

A surety on any bond required by this part may at any time, in writing, notify the principal and the appropriate ATF officer in whose office the bond is on file that the surety desires, after a date named, to be relieved of liability under the bond. Unless the notice is withdrawn, in writing, before the date named in it, the notice shall take effect on that date. The date shall not be less than 60 days after the date on which both the notice and proof of service on the principal have been received by the appropriate ATF officer. The surety shall deliver one copy of the notice to the principal and the original to the appropriate ATF officer. The surety shall also file with the appropriate ATF officer an acknowledgment or other proof of service on the principal.

[T.D. ATF-379, 61 FR 31412, June 20, 1996 as amended by T.D. ATF-436, 66 FR 5471, Jan. 19, 2001]

### **§17.113 Extent of release of surety from liability under bond.**

The rights of the principal as supported by the bond shall cease as of the date when termination of the bond takes effect, and the surety shall be relieved from liability for drawback allowed on and after that date. Liability for drawback previously allowed shall continue until the claims for such drawback have been properly verified by the appropriate ATF officer according to law and this part.

[T.D. ATF-379, 61 FR 31412, June 20, 1996 as amended by T.D. ATF-436, 66 FR 5471, Jan. 19, 2001]

### **§17.114 Release of collateral.**

The release of collateral security pledged and deposited to satisfy the bond requirement of this part is governed by the provisions of 31 CFR part 225. When the appropriate ATF officer determines that there is no outstanding liability under the bond, and is satisfied that the interests of the Government will not be jeopardized, the security shall be released and returned to the principal.

(Sec. 1, Pub. L. 97-258, 96 Stat. 1046 (31 U.S.C. 9301, 9303))

[T.D. ATF-379, 61 FR 31412, June 20, 1996 as amended by T.D. ATF-436, 66 FR 5471, Jan. 19, 2001]

## **Subpart F--Formulas and Samples**

### **§17.121 Product formulas.**

#### *(a) General.*

Except as provided in §§17.132 and 17.182, manufacturers shall file quantitative formulas for all preparations for which they intend to file drawback claims. Such formulas shall state the quantity of each ingredient, and shall separately state the quantity of spirits to be recovered or to be consumed as an essential part of the manufacturing process.

#### *(b) Filing.*

Formulas shall be filed on ATF Form 5154.1, Formula and Process for Nonbeverage Products. Filing shall be accomplished no later than 6 months after the end of the quarter in which taxpaid distilled spirits were first used to manufacture the product for purposes of drawback. If a product's formula is disapproved, no drawback shall be allowed on spirits used to manufacture that product, unless it is later used as an intermediate product, as provided in §17.137.

#### *(c) Numbering.*

The formulas shall be serially numbered by the manufacturer, commencing with number 1 and continuing thereafter in numerical sequence. However, a new formula for use at several plants shall be given the highest number next in sequence at any of those plants. The numbers that were skipped at the other plants shall not be used subsequently.

#### *(d) Distribution and retention of approved formulas.*

One copy of each approved Form 5154.1 shall be returned to the manufacturer. The formulas returned to manufacturers shall be kept in serial order at the place of

manufacture, as provided in §17.170, and shall be made available to appropriate ATF officers for examination in the investigation of drawback claims.

[T.D. ATF-379, 61 FR 31412, June 20, 1996 as amended by T.D. ATF-436, 66 FR 5470, Jan. 19, 2001]

### **§17.122 Amended or revised formulas.**

Except as provided in this section, amended or revised formulas are considered to be new formulas and shall be numbered accordingly. Minor changes may be made to a current formula on ATF Form 5154.1 with retention of the original formula number, if approval is obtained from the appropriate ATF officer. In order to obtain approval to make a minor formula change, the person holding the Form 5154.1 shall submit a letter of application appropriate ATF officer, indicating the formula change and requesting that the proposed change be considered a minor change. Each such application shall clearly identify the original formula by number, date of approval, and name of product. The application shall indicate whether the product is, has been, or will be used in alcoholic beverages, and shall specify whether the proposed change is intended as a substitution or merely as an alternative for the original formula. No changes may be made to current formulas without specific ATF approval in each case.

[T.D. ATF-379, 61 FR 31412, June 20, 1996 as amended by T.D. ATF-436, 66 FR 5470, Jan. 19, 2001]

### **§17.123 Statement of process.**

Any person claiming drawback under the regulations in this part may be required, at any time, to file a statement of process, in addition to that required by ATF Form 5154.1, as well as any other data necessary for consideration of the claim for drawback. When pertinent to consideration of the claim, submission of copies of the commercial labels used on the finished products may also be required.

### **§17.124 Samples.**

Any person claiming drawback or submitting a formula for approval under the regulations in this part may be required, at any time, to submit a sample of each nonbeverage or intermediate product for analysis. If the product is manufactured with a mixture of oil or other ingredients, the composition of which is unknown to the claimant, a 1-ounce sample of the mixture shall be submitted with the sample of finished product when so required.

### **§17.125 Adoption of formulas and processes.**

#### **(a) *Adoption of predecessor's formulas.***

If there is a change in the proprietorship of a nonbeverage plant and the successor desires to use the predecessor's formulas at the same location, the successor may, in lieu of submitting new formulas in its own name, adopt any or all of the formulas of the predecessor by filing a notice of adoption with the appropriate ATF officer. The notice shall be filed with the first claim relating to any of the adopted formulas. A letterhead notice must be filed with the appropriate ATF officer and be accompanied by two photocopies of each formula to be adopted. The notice shall be accompanied by a certified copy of the articles of incorporation or other document(s) necessary to prove the transfer of ownership. The manufacturer shall retain a copy of the notice with the related formulas.

(b) *Adoption of manufacturer's own formulas from a different location.*

A manufacturer's own formulas may be adopted for use at another of the manufacturer's plants. Further, a wholly owned subsidiary may adopt the formulas of the parent company, and vice versa. The procedure for such adoption shall be by filing a letterhead notice, accompanied by two photocopies of each formula to be adopted, with the Alcohol and Tobacco Laboratory for transmittal to the appropriate ATF officer. The notice shall list the numbers of all formulas to be adopted and shall indicate the plant where each was originally approved and the plant(s) where each is to be adopted. Some evidence of the relationship between the plants involved in the adoption shall be attached to the notice. The notice shall be referenced in Part IV of the supporting data (ATF Form 5154.2) filed with the first claim relating to the adopted formula(s).

[T.D. ATF-379, 61 FR 31412, June 20, 1996 as amended by T.D. ATF-436, 66 FR 5471, Jan. 19, 2001]

**§17.126 Formulas for intermediate products.**

(a) The manufacturer shall submit a formula on ATF Form 5154.1 for each self-manufactured ingredient made with taxpaid spirits and intended for the manufacturer's own use in nonbeverage products, unless the formula for any such ingredient is fully expressed as part of the approved formula for each nonbeverage product in which that ingredient is used, or unless the formula for the ingredient is contained in one of the pharmaceutical publications listed in §17.132.

(b) Upon receipt of Form 5154.1 covering a self-manufactured ingredient made with taxpaid spirits, the formula shall be examined under §17.131. If the formula is approved for drawback, the ingredient shall be treated as a finished nonbeverage product for purposes of this part, rather than as an intermediate product, notwithstanding its use by the manufacturer. (For example, see §17.152(d).) If the formula is disapproved for drawback, the ingredient may be treated as an intermediate product in accordance with this part. Requirements pertaining to intermediate products are found in §17.185(b).

(c) If there is a change in the composition of an intermediate product, the manufacturer shall submit an amended or revised formula, as provided in §17.122.

[T.D. ATF-379, 61 FR 31412, June 20, 1996 as amended by T.D. ATF-436, 66 FR 5471, Jan. 19, 2001]

**§17.127 Self-manufactured ingredients treated optionally as unfinished nonbeverage products.**

A self-manufactured ingredient made with taxpaid spirits, which otherwise would be treated as an intermediate product, may instead be treated as an unfinished nonbeverage product, if the ingredient's formula is fully expressed as a part of the approved formula for the nonbeverage product in which the ingredient will be used. A manufacturer desiring to change the treatment of an ingredient from "intermediate product" to "unfinished nonbeverage product" (or vice versa) may do so by resubmitting the applicable formula(s) on ATF Form 5154.1. Requirements pertaining to unfinished nonbeverage products are found in §17.185(c).

**Approval of Formulas**

**§17.131 Formulas on ATF Form 5154.1.**

Upon receipt, formulas on ATF Form 5154.1 shall be examined and, if found to be medicines, medicinal preparations, food products, flavors, flavoring extracts, or perfume which are unfit for beverage purposes and which otherwise meet the requirements of law and this part, they shall be approved for drawback. If the formulas do not meet the requirements of the law and regulations for drawback products, they shall be disapproved.

[T.D. ATF-379, 61 FR 31412, June 20, 1996 as amended by T.D. ATF-436, 66 FR 5471, Jan. 19, 2001]

### **§17.132 U.S.P., N.F., and H.P.U.S. preparations.**

#### **(a) *General.***

Except as otherwise provided by paragraph (b) of this section or by ATF ruling, formulas for compounds in which alcohol is a prescribed quantitative ingredient, which are stated in the current revisions or editions of the United States Pharmacopoeia (U.S.P.), the National Formulary (N.F.), or the Homeopathic Pharmacopoeia of the United States (H.P.U.S.), shall be considered as approved formulas and may be used as formulas for drawback products without the filing of ATF Form 5154.1.

#### **(b) *Exceptions.***

Alcohol (including dehydrated alcohol and dehydrated alcohol injection), U.S.P.; alcohol and dextrose injection, U.S.P.; and tincture of ginger, H.P.U.S., have been found to be fit for beverage use and are disapproved for drawback. All attenuations of other H.P.U.S. products diluted beyond one part in 10,000 ("4x") are also disapproved for drawback, unless the manufacturer receives approval for a formula submitted on Form 5154.1 in accordance with this subpart. The formula for such attenuations shall be submitted with a sample of the product and a statement explaining why it should be classified as unfit for beverage use.

### **§17.133 Food product formulas.**

Formulas for nonbeverage food products on ATF Form 5154.1 may be approved if they are unfit for beverage purposes. Approval does not authorize manufacture or sale contrary to State law. Examples of food products that have been found to be unfit for beverage purposes are stated below:

#### **(a) *Sauces or syrups.***

Sauces, or syrups consisting of sugar solutions and distilled spirits, in which the alcohol content is not more than 12 percent by volume and the sugar content is not less than 60 grams per 100 cubic centimeters.

#### **(b) *Brandied fruits.***

Brandied fruits consisting of solidly packaged fruits, either whole or segmented, and distilled spirits products not exceeding the quantity and alcohol content necessary for flavoring and preserving. Generally, brandied fruits will be considered to have met these standards if the container is well filled, the alcohol in the liquid portion does not exceed 23 percent by volume, and the liquid portion does not exceed 45 percent of the volume of the container.



(c) *Candies.*

Candies with alcoholic fillings, if the fillings meet the standards prescribed for sauces and syrups by paragraph (a) of this section.

(d) *Other food products.*

Food products such as mincemeat, plum pudding, and fruit cake, where only sufficient distilled spirits are used for flavoring and preserving; and ice cream and ices where only sufficient spirits are used for flavoring purposes. Also food adjuncts, such as preservatives, emulsifying agents, and food colorings, that are unfit for beverage purposes and are manufactured and used, or sold for use, in food.

**§17.134 Determination of unfitness for beverage purposes.**

The appropriate ATF officer has responsibility for determining whether products are fit or unfit for beverage purposes within the meaning of 26 U.S.C. 5131. This determination may be based either on the content and description of the ingredients as shown on ATF Form 5154.1, or on organoleptic examination. In such examination, samples of products may be diluted with water to an alcoholic concentration of 15% and tasted. Sale or use for beverage purposes is indicative of fitness for beverage use.

[T.D. ATF-379, 61 FR 31412, June 20, 1996 as amended by T.D. ATF-436, 66 FR 5470, Jan. 19, 2001]

**§17.135 Use of specially denatured alcohol (S.D.A.).**

(a) *Use of S.D.A. in nonbeverage or intermediate products--*

(1) *General.* Except as provided in paragraph (b) of this section, the use of specially denatured alcohol (S.D.A.) and taxpaid spirits in the same product by a nonbeverage manufacturer is prohibited where drawback of tax is claimed.

(2) *Alternative formulations.* No formula for a product on ATF Form 5154.1 shall be approved for drawback under this subpart if the manufacturer also has on file an approved ATF Form 1479-A or Form 5150.19, Formula for Article Made With Specially Denatured Alcohol or Rum, pertaining to the same product.

(b) *Use of S.D.A. in ingredients--*

(1) *Purchased ingredients.* Generally, purchased ingredients containing S.D.A. may be used in nonbeverage or intermediate products. However, such ingredients shall not be used in medicinal preparations or flavoring extracts intended for internal human use, where any of the S.D.A. remains in the finished product.

(2) *Self-manufactured ingredients.* Self-manufactured ingredients may be made with S.D.A. and used in nonbeverage or intermediate products, provided--

(i) No taxpaid spirits are used in manufacturing such ingredients; and

(ii) All S.D.A. is recovered or dissipated from such ingredients prior to their use in nonbeverage or intermediate products. (Recovery of S.D.A. shall be in accordance with subpart K of part 20 of this chapter; recovered S.D.A., with or without its original denaturants, shall not be reused in nonbeverage or

intermediate products.)

(Sec. 201, Pub. L. 85-859, 72 Stat. 1372, as amended (26 U.S.C. 5273))

### **§17.136 Compliance with Food and Drug Administration requirements.**

A product is not a medicine, medicinal preparation, food product, flavor, flavoring extract, or perfume for nonbeverage drawback if its formula would violate a ban or restriction of the U.S. Food and Drug Administration (FDA) pertaining to such products. If FDA bans or restricts the use of any ingredient in such a way that further manufacture of a product in accordance with its formula would violate the ban or restriction, then the manufacturer shall change the formula and resubmit it on ATF Form 5154.1. This section does not preclude approval for products manufactured solely for export or for uses other than internal human consumption (e.g. tobacco flavors or animal feed flavors) in accordance with laws and regulations administered by FDA. Under §17.123, manufacturers may be required to demonstrate compliance with FDA requirements applicable to this section.

[T.D. ATF-379, 61 FR 31412, June 20, 1996 as amended by T.D. ATF-436, 66 FR 5471, Jan. 19, 2001]

### **§17.137 Formulas disapproved for drawback.**

A formula may be disapproved for drawback either because it does not prescribe appropriate ingredients in sufficient quantities to make the product unfit for beverage use, or because the product is neither a medicine, a medicinal preparation, a food product, a flavor, nor a flavoring extract. The formula for a disapproved product may be used as an intermediate product formula under §17.126. No drawback will be allowed on distilled spirits used in a disapproved product, unless that product is later used in the manufacture of an approved nonbeverage product. In the case of a product that is disapproved because it is fit for beverage use, any further use or disposition of such a product, other than as an intermediate product in accordance with this part, subjects the manufacturer to the qualification requirements of parts 1 and 19 of this chapter.

## **Subpart G--Claims for Drawback**

### **§17.141 Drawback.**

Upon the filing of a claim as provided in this subpart, drawback shall be allowed to any person who meets the requirements of this part. Drawback shall be paid at the rate specified by 26 U.S.C. 5134 on each proof gallon of distilled spirits on which the tax has been paid or determined and which have been used in the manufacture of nonbeverage products. The drawback rate is \$1.00 less than the effective tax rate. Drawback shall be allowed only to the extent that the claimant can establish, by evidence satisfactory to the appropriate ATF officer, the actual quantity of taxpaid or tax-determined distilled spirits used in the manufacture of the product, and the effective tax rate applicable to those spirits. Special tax as a manufacturer of nonbeverage products shall be paid before drawback is allowed.

[T.D. ATF-379, 61 FR 31412, June 20, 1996 as amended by T.D. ATF-436, 66 FR 5471, Jan. 19, 2001]

### **§17.142 Claims.**

#### **(a) *General.***

The manufacturer must file claim for drawback with the appropriate ATF officer who



has the authority to approve or disapprove claims. A separate claim shall be filed for each place of business. Each claim shall pertain only to distilled spirits used in the manufacture or production of nonbeverage products during any one quarter of the tax year. Unless the manufacturer is eligible to file monthly claims (see §§17.143 and 17.144), only one claim per quarter may be filed for each place of business. Claims shall be filed on ATF Form 2635 (5620.8), Claim--Alcohol and Tobacco Taxes.

*(b) Manufacturers who are also proprietors of distilled spirits plants.*

If a manufacturer of nonbeverage products is owned and operated by the same business entity that owns and operates a distilled spirits plant, the manufacturer's claim for drawback may be filed for credit on Form 2635 (5620.8). After the claim is approved, the distilled spirits plant may use the claim as an adjustment decreasing the taxes due in Schedule B of ATF Form 5000.24, Excise Tax Return. Adjustments resulting from an approved drawback claim are not subject to interest. This procedure may be utilized only if the manufacturer of nonbeverage products and the distilled spirits plant have the same employer identification number.

**§17.143 Notice for monthly claims.**

If the manufacturer has notified the appropriate ATF officer, in writing, of an intention to file claims on a monthly basis instead of a quarterly basis, and has filed a bond in compliance with the provisions of this part, claims may be filed monthly instead of quarterly. The election to file monthly claims shall not preclude a manufacturer from filing a single claim covering an entire quarter, or a single claim covering just two months of a quarter, or two claims (one of them covering one month and the other covering two months). An election for the filing of monthly claims may be withdrawn by the manufacturer by filing a notice to that effect, in writing, with the appropriate ATF officer.

[T.D. ATF-379, 61 FR 31412, June 20, 1996 as amended by T.D. ATF-436, 66 FR 5471, Jan. 19, 2001]

**§17.144 Bond for monthly claims.**

Each person intending to file claims for drawback on a monthly basis shall file an executed bond on ATF Form 5154.3, conforming to the provisions of subpart E of this part. A monthly drawback claim shall not be allowed until bond coverage in a sufficient amount has been approved by the appropriate ATF officer. When the limit of liability under a bond given in less than the maximum amount has been reached, further drawback on monthly claims may be suspended until a strengthening or superseding bond in a sufficient amount is furnished.

[T.D. ATF-379, 61 FR 31412, June 20, 1996 as amended by T.D. ATF-436, 66 FR 5471, Jan. 19, 2001]

**§17.145 Date of filing claim.**

Quarterly claims for drawback shall be filed within six months after the quarter in which the distilled spirits covered by the claim were used in the manufacture of nonbeverage products. Monthly claims for drawback may be filed at any time after the end of the month in which the distilled spirits covered by the claim were used in the manufacture of nonbeverage products, but shall be filed not later than the close of the sixth month succeeding the quarter in which the spirits were used.

[T.D. ATF-379, 61 FR 31412, June 20, 1996 as amended by T.D. ATF-436, 66 FR 5471, Jan. 19, 2001]

#### **§17.146 Information to be shown by the claim.**

The claim shall set forth the following:

- (a) Whether the special tax has been paid.
- (b) That the distilled spirits on which drawback is claimed were fully taxpaid or tax-determined at the effective tax rate applicable to the distilled spirits.
- (c) That the distilled spirits on which the drawback is claimed were used in the manufacture of nonbeverage products.
- (d) Whether the nonbeverage products were manufactured in compliance with quantitative formulas approved under subpart F of this part. (If not, attach explanation.)
- (e) That the data submitted in support of the claim are correct.

#### **§17.147 Supporting data.**

- (a) Each claim for drawback shall be accompanied by supporting data presented according to the format shown on ATF Form 5154.2, Supporting Data for Nonbeverage Drawback Claims (or according to any other suitable format which provides the same information). Modifications of Form 5154.2 may be used without prior authorization, if the modified format clearly shows all of the required information that is pertinent to the manufacturing operation. Under §17.123, the appropriate ATF officer may require additional supporting data when needed to determine the correctness of drawback claims.
- (b) Separate data shall be shown for eligible distilled spirits taxpaid at different effective tax rates. This requirement applies to all eligible spirits, including eligible recovered alcohol and eligible spirits contained in intermediate products.
- (c) Separate data shall be shown for imported rum, spirits from Puerto Rico containing at least 92% rum, and spirits from the U.S. Virgin Islands containing at least 92% rum. The total number of proof gallons of each such category used subject to drawback during the claim period shall also be shown, with separate totals for each effective tax rate. These amounts shall include eligible spirits and rum from intermediate products or recovered alcohol.
- (d) Any gain in eligible distilled spirits reported in the supporting data shall be reflected by an equivalent deduction from the amount of drawback claimed. Gains shall not be offset by known losses.

[T.D. ATF-379, 61 FR 31412, June 20, 1996 as amended by T.D. ATF-436, 66 FR 5471, Jan. 19, 2001]

#### **§17.148 Allowance of claims.**

##### **(a) *General.***

Except in the case of fraudulent noncompliance, no claim for drawback shall be denied for a failure to comply with either 26 U.S.C. 5131-5134 or the requirements of this part, if the claimant establishes that spirits on which the tax has been paid or determined were in fact used in the manufacture of medicines, medicinal preparations, food products, flavors, flavoring extracts, or perfume, which were unfit

for beverage purposes.

(b) *Penalty.*

Noncompliance with the requirements of 26 U.S.C. 5131-5134 or of this part subjects the claimant to a civil penalty of \$1,000 for each separate product, reflected in a claim for drawback, to which the noncompliance relates, or the amount claimed for that product, whichever is less, unless the claimant establishes that the noncompliance was due to reasonable cause. Late filing of a claim subjects the claimant to a civil penalty of \$1,000 or the amount of the claim, whichever is less, unless the claimant establishes that the lateness was due to reasonable cause.

(c) *Reasonable cause.*

Reasonable cause exists where a claimant establishes it exercised ordinary business care and prudence, and still was unable to comply with the statutory and regulatory requirements. Ignorance of law or regulations, in and of itself, is not reasonable cause. Each case is individually evaluated.

(Sec. 452, Pub. L. 98-369, 98 Stat. 819 (26 U.S.C. 5134(c))

## **Spirits Subject to Drawback**

### **§17.151 Use of distilled spirits.**

Distilled spirits are considered to have been used in the manufacture of a product under this part if the spirits are consumed in the manufacture, are incorporated into the product, or are determined by ATF to have been otherwise utilized as an essential part of the manufacturing process. However, spirits lost by causes such as spillage, leakage, breakage or theft, and spirits used for purposes such as rinsing or cleaning a system, are not considered to have been used in the manufacture of a product.

### **§17.152 Time of use of spirits.**

(a) *General.*

Distilled spirits shall be considered used in the manufacture of a product as soon as that product contains all the ingredients called for by its formula.

(b) *Spirits used in an ion exchange column.*

Distilled spirits used in recharging an ion exchange column, the operation of which is essential to the production of a product, shall be considered to be used when the spirits are entered into the manufacturing system in accordance with the product's formula.

(c) *Products requiring additional processing or treatment.*

Further manipulation of a product, such as aging or filtering, subsequent to the mixing together of all of its ingredients, shall not postpone the time when spirits are considered used, as determined under paragraph (a) of this section. This is true even if at the time of use there has not yet been a final determination of alcoholic content by assay. If, however, it is later found necessary to add more distilled spirits to standardize the product, such added spirits shall be considered as used in the

period during which they were added.

(d) *Nonbeverage products used to manufacture other products.*

Nonbeverage products may be used to manufacture other nonbeverage (or intermediate) products. However, such subsequent usage of a nonbeverage product shall not affect the time when the distilled spirits contained therein are considered used. When distilled spirits are used in the manufacture of a nonbeverage product, the time of use shall be the point at which that product first contains all of its prescribed ingredients, and such use shall not be determined by the time of any subsequent usage of that product in another product.

**§17.153 Recovered spirits.**

(a) *Recovery from intermediate products.*

Eligible spirits recovered in the manufacture of intermediate products are not subject to drawback until such recovered spirits are used in the manufacture of a nonbeverage product. (However, see §17.127 with respect to optional treatment of ingredients as unfinished nonbeverage products, rather than as intermediate products.) Spirits recovered in the manufacture of intermediate products shall be reused only in the manufacture of intermediate or nonbeverage products.

(b) *Recovery from nonbeverage products.*

Distilled spirits recovered in the manufacture of a nonbeverage product are considered as having been used in the manufacture of that product. If the spirits were eligible when so used, they became subject to drawback at that time. Upon recovery, such spirits may be reused in the manufacture of nonbeverage products, but shall not be reused for any other purpose. When reused, such recovered spirits are not again eligible for drawback and shall not be used in the manufacture of intermediate products.

(c) *Cross references.*

For additional provisions respecting the recovery of distilled spirits and related recordkeeping requirements, see §§17.168 and 17.183.

**§17.154 Spirits contained in intermediate products.**

Spirits contained in an intermediate product are not subject to drawback until that intermediate product is used in the manufacture of a nonbeverage product.

**§17.155 Spirits consumed in manufacturing intermediate products.**

Spirits consumed in the manufacture of an intermediate product--which are not contained in the intermediate product at the time of its use in nonbeverage products--are not subject to drawback. Such spirits are not considered to have been used in the manufacture of nonbeverage products. However, see §17.127 with respect to optional treatment of ingredients as unfinished nonbeverage products, rather than as intermediate products.

**Subpart H--Records**

### **§17.161 General.**

Each person claiming drawback on taxpaid distilled spirits used in the manufacture of nonbeverage products shall maintain records showing the information required in this subpart. No particular form is prescribed for these records, but the data required to be shown shall be clearly recorded and organized to enable appropriate ATF officers to trace each operation or transaction, monitor compliance with law and regulations, and verify the accuracy of each claim. Ordinary business records, including invoices and cost accounting records, are acceptable if they show the required information or are annotated to show any such information that is lacking. The records shall be kept complete and current at all times, and shall be retained by the manufacturer at the place covered by the special tax stamp for the period prescribed in §17.170.

[T.D. ATF-379, 61 FR 31412, June 20, 1996 as amended by T.D. ATF-436, 66 FR 5470, Jan. 19, 2001]

### **§17.162 Receipt of distilled spirits.**

#### **(a) *Distilled spirits received in tank cars, tank trucks, barrels, or drums.***

For distilled spirits received in tank cars, tank trucks, barrels, or drums, the manufacturer shall record, with respect to each shipment received--

- (1) The date of receipt;
- (2) The name and address of the person from whom received;
- (3) The serial number or other identification mark (if any) of each tank car, tank truck, barrel, or drum;
- (4) The name of the producer or warehouseman who paid or determined the tax;
- (5) The effective tax rate (if other than the rate prescribed by 26 U.S.C. 5001);  
and
- (6) The kind, quantity, and proof (or alcohol percentage by volume) of the spirits.

#### **(b) *Distilled spirits received in bottles.***

For distilled spirits received in bottles, the manufacturer shall record--

- (1) The date of receipt;
- (2) The name and address of the seller;
- (3) The serial number of each case, if the bottles are received in cases;
- (4) The name of the bottler;
- (5) The effective tax rate (if other than the rate prescribed by 26 U.S.C. 5001);  
and
- (6) The kind, quantity, and proof (or alcohol percentage by volume) of the spirits.

#### **(c) *Distilled spirits received by pipeline.***

For distilled spirits received by pipeline, the manufacturer shall record--

- (1) The date of receipt;
- (2) The name of the producer or warehouseman who paid or determined the tax;
- (3) The effective tax rate (if other than the rate prescribed by 26 U.S.C. 5001); and
- (4) The kind, quantity, and proof (or alcohol percentage by volume) of the spirits.

(d) *Determination of quantity.*

At the time of receipt, each manufacturer shall determine (preferably by weight) and record the exact number of proof gallons of distilled spirits received. The amount received in bottles may be determined by the required statements on the labels. The amount received in sealed drums with no evidence of leakage may be determined from the record of shipment, which is required by §19.780 of this chapter to accompany spirits received from a distilled spirits plant. If spirits are received in a tank car or tank truck, and the result of the manufacturer's gauge of the spirits is within 0.2 percent of the number of proof gallons reported on the record of shipment required by §19.780, then the number of proof gallons reported on that record may be recorded as the quantity received. Nevertheless, the receiving gauge shall be noted on the record of receipt. If, for any shipment, the amount recorded in the manufacturer's records as the quantity received is greater than the amount shown as taxpaid on the record required by §19.780, a deduction equivalent to the excess shall be made from the amount of drawback claimed in the manufacturer's claim covering that period. If no claim is filed for that period, then the deduction shall be made in the manufacturer's next claim. Losses in transit that exceed the 0.2 percent limitation provided in this paragraph shall be determined and noted on the record of receipt. Such losses shall not be recorded as distilled spirits received.

(e) *Receipt of imported rum, or spirits from Puerto Rico or the Virgin Islands.*

If spirits are received which contain at least 92% rum, and which originate from Puerto Rico or the U.S. Virgin Islands, the record of receipt shall indicate the place of origin. If rum is received, the record shall indicate whether it is from Puerto Rico, from the U.S. Virgin Islands, imported from other countries, or domestic.

(f) *Shipments from distilled spirits plants.*

If spirits are received directly from the distilled spirits plant that paid or determined the tax, the manufacturer shall retain the record of shipment required by §19.780 of this chapter. To the extent that the information on that record duplicates the requirements of this section, retention of that record shall satisfy those requirements. If there are differences between the information on the record of shipment and the information required to be recorded by this section, the requirements of this section may be met by appropriate annotations on the record of shipment.

### **§17.163 Evidence of taxpayment of distilled spirits.**

(a) *Shipments from distilled spirits plants.*

For each shipment of taxpaid spirits from the bonded premises of a distilled spirits plant, the manufacturer shall obtain the record of shipment prepared by the supplier under §19.780 of this chapter. This record shall be retained with the commercial

invoice (if the latter is a separate document) as evidence of taxpayment of the spirits. The record shall show the effective tax rate(s) (if other than the rate prescribed by 26 U.S.C. 5001) applicable to the shipment.

(b) *Purchases from wholesale and retail liquor dealers.*

Manufacturers shall obtain commercial invoices or other documentation pertaining to purchases of distilled spirits from wholesale and retail liquor dealers (including such dealership operations when conducted in conjunction with a distilled spirits plant). For spirits other than alcohol, grain spirits, neutral spirits, distilled gin, or straight whisky (as defined in the standards of identity prescribed by §5.22 of this chapter), the manufacturer of nonbeverage products shall obtain evidence, from the producer or bottler of the spirits, as to the effective tax rate paid thereon.

(c) *Imported spirits.*

For imported spirits that were taxpaid through Customs, evidence of such taxpayment (such as Customs Forms 7501 and 7505, receipted to indicate payment of tax, and the certificate of effective tax rate computation, if applicable) shall be secured from the importer and retained by the manufacturer.

(d) *Evidence of effective tax rate.*

If the evidence of effective tax rate, required by this section for distilled spirits products that may contain wine or flavors, is not obtained, drawback shall only be allowed based on the lowest effective tax rate possible for the kind of distilled spirits product used.

## **§17.164 Production record.**

(a) *General.*

Each manufacturer shall keep a production record for each batch of intermediate product and for each batch of nonbeverage product. The production record shall be an original record made at the time of production by a person (or persons) having actual knowledge thereof. If any product is produced by a continuous process rather than by batches, the production record shall pertain to the total quantity of that product produced during each claim period.

(b) *Information to be shown.*

The record shall show the name and formula number of the product, the actual quantities of all ingredients used in the manufacture of the batch (including the proof or alcohol percentage by volume of all spirits), the date when eligible spirits were considered used (see §17.152), the effective tax rate applicable to those spirits (if other than the rate prescribed by 26 U.S.C. 5001), and the quantity of product produced. The alcohol content of the product shall be shown if a test of alcohol content was made (see paragraph (e) of this section). Usage of eligible and ineligible spirits shall be shown separately. If spirits from Puerto Rico or the U.S. Virgin Islands, containing at least 92% rum, were used, the record shall indicate their place of origin. If rum was used, the record shall indicate whether it was from Puerto Rico, from the U.S. Virgin Islands, imported from other countries, or domestic. If spirits were recovered, the production record shall so indicate, and the record required by



§17.168 shall be kept. If drawback is claimed on spirits consumed as an essential part of the manufacture of a nonbeverage product, which were not contained in that product at its completion, then the production record shall show the quantity of spirits so consumed in the manufacture of each batch.

(c) *Specificity of information.*

The production record shall refer to ingredients by the same names as are used for them in the product's formula. This includes formulas submitted to ATF and formulas contained in the publications listed in §17.132. Other names for the ingredients may be added in the production record, if necessary for the manufacturer's operations. Usage of ingredients (including spirits) may be shown in units of weight or volume.

(d) *Determining quantity of distilled spirits used.* Each manufacturer shall accurately determine, by weight or volume, and record in the production records the quantity of all distilled spirits used. When the quantity used is determined by volume, adjustments shall be made if the temperature of the spirits is above or below 60 degrees Fahrenheit. A table for correction of volume of spirituous liquors to 60 degrees Fahrenheit, Table 7 of the "Gauging Manual," is available. See subpart E of part 30 of this chapter and §30.67. Losses after receipt due to leakage, spillage, evaporation, or other causes not essential to the manufacturing process shall be accurately recorded in the manufacturer's permanent records at the time such losses are determined.

(e) *Tests of alcohol content.* At representative intervals, the manufacturer shall verify the alcohol content of nonbeverage products. The results of such tests shall be recorded.

**§17.165 Receipt of raw ingredients.**

For raw ingredients destined to be used in nonbeverage or intermediate products, the manufacturer shall record, for each shipment received--

- (a) The date of receipt;
- (b) The quantity received; and
- (c) The identity of the supplier.

**§17.166 Disposition of nonbeverage products.**

(a) *Shipments.*

For each shipment of nonbeverage products, the manufacturer shall record--

- (1) The formula number of the product;
- (2) The date of shipment;
- (3) The quantity shipped; and
- (4) The identity of the consignee.

(b) *Other disposition.*

For other dispositions of nonbeverage products, the manufacturer shall record--

- (1) The type of disposition;



- (2) The date of disposition; and
- (3) The quantity of each product so disposed of.

(c) *Exception.*

The manufacturer need not keep the records required by paragraphs (a) and (b) of this section for any nonbeverage product which either contains less than 3 percent of distilled spirits by volume, or is sold by the producer directly to the consumer in retail quantities. However, when needed for protection of the revenue, the appropriate ATF officer may at any time require the keeping of these records upon giving at least five days' notice to the manufacturer.

[T.D. ATF-379, 61 FR 31412, June 20, 1996 as amended by T.D. ATF-436, 66 FR 5471, Jan. 19, 2001]

### **§17.167 Inventories.**

(a) *Distilled spirits.*

The "on hand" figures reported in Part II of ATF Form 5154.2 shall be verified by physical inventories taken as of the end of each quarter in which nonbeverage products were manufactured for purposes of drawback. Spirits taxpaid at different effective tax rates shall be inventoried separately. The inventory record shall show the date inventory was taken, the person(s) by whom it was taken, subtotals for each product inventoried, and any gains or losses disclosed; and shall be retained with the manufacturer's records. The manufacturer shall explain in Part IV of the supporting data (Form 5154.2) any discrepancy between the amounts on hand as disclosed by physical inventory and the amounts indicated by the manufacturer's records. Any gain in eligible spirits disclosed by inventory requires an equivalent deduction from the claim with which the inventory is reported. Gains shall not be offset by known losses. If no claim is filed for a quarter (nor for any monthly period therein), then no physical inventory is required for that quarter.

(b) *Raw ingredients and nonbeverage products.*

When necessary for ensuring compliance with regulations and protection of the revenue, the appropriate ATF officer may require a manufacturer to take physical inventories of finished nonbeverage products, and/or raw ingredients intended for use in the manufacture of nonbeverage or intermediate products. The results of such inventories shall be recorded in the manufacturer's records. Any discrepancy between the amounts on hand as disclosed by physical inventory and such amounts as indicated by the manufacturer's records shall also be recorded with an explanation of its cause.

[T.D. ATF-379, 61 FR 31412, June 20, 1996 as amended by T.D. ATF-436, 66 FR 5471, Jan. 19, 2001]

### **§17.168 Recovered spirits.**

(a) Each manufacturer intending to recover distilled spirits under the provisions of this part shall first notify the appropriate ATF officer. Any apparatus used to separate alcohol is subject to the registration requirements of 26 U.S.C. 5179 and subpart C of part 170 of this chapter. Recovery operations shall only be conducted on the premises covered by the manufacturer's special tax stamp.

(b) The manufacturer shall keep a record of the distilled spirits recovered and

the subsequent use to which such spirits are put. The record shall show--

- (1) The date of recovery;
- (2) The commodity or process from which the spirits were recovered;
- (3) The amount in proof gallons, or by weight and proof (or alcohol percentage by volume) of distilled spirits recovered;
- (4) The amount in proof gallons, or by weight and proof (or alcohol percentage by volume) of recovered distilled spirits reused;
- (5) The commodity in which the recovered distilled spirits were reused; and
- (6) The date of reuse.

(c) Whenever recovered spirits are destroyed (see §17.183), the record shall further show--

- (1) The reason for the destruction;
- (2) The date, time, location, and manner of destruction;
- (3) The number of proof gallons destroyed; and
- (4) The name of the individual who accomplished or supervised the destruction.

[T.D. ATF-379, 61 FR 31412, June 20, 1996 as amended by T.D. ATF-436, 66 FR 5471, Jan. 19, 2001]

### **§17.169 Transfer of intermediate products.**

When intermediate products are transferred as permitted by §17.185(b), supporting records of such transfers shall be kept at the shipping and receiving plants, showing the date and quantity of each product transferred.

### **§17.170 Retention of records.**

Each manufacturer shall retain for a period of not less than 3 years all records required by this part, a copy of all claims and supporting data filed in support thereof, all commercial invoices or other documents evidencing taxpayment or tax-determination of domestic spirits, all documents evidencing taxpayment of imported spirits, and all bills of lading received which pertain to shipments of spirits. In addition, a copy of each formula submitted on ATF Form 5154.1 shall be retained at each factory where the formula is used, for not less than 3 years from the date of filing of the last claim for drawback under the formula. A copy of an approval to use an alternate method or procedure shall be retained as long as the manufacturer employs the method or procedure, and for 3 years thereafter. Further, the appropriate ATF officer may require these records, forms, and documents to be retained for an additional period of not more than 3 years in any case where he or she deems such retention to be necessary or advisable for protection of the revenue.

[T.D. ATF-379, 61 FR 31412, June 20, 1996 as amended by T.D. ATF-436, 66 FR 5471, Jan. 19, 2001]

### **§17.171 Inspection of records.**

All of the records, forms, and documents required to be retained by §17.170 shall be kept at the place covered by the special tax stamp and shall be readily available during

the manufacturer's regular business hours for examination and copying by appropriate ATF officers. At the same time, any other books, papers, records or memoranda in the possession of the manufacturer, which have a bearing upon the matters required to be alleged in a claim for drawback, shall be available for inspection by appropriate ATF officers.

(Sec. 5133, 68A Stat. 623 (26 U.S.C. 5133); sec. 201, Pub. L. 85-859, 72 Stat. 1348 (26 U.S.C. 5146)).

[T.D. ATF-379, 61 FR 31412, June 20, 1996 as amended by T.D. ATF-436, 66 FR 5470, Jan. 19, 2001]

## **Subpart I--Miscellaneous Provisions**

### **§17.181 Exportation of medicinal preparations and flavoring extracts.**

Medicinal preparations and flavoring extracts, approved for drawback under the provisions of this part, may be exported subject to 19 U.S.C. 1313(d), which authorizes export drawback equal to the entire amount of internal revenue tax found to have been paid on the domestic alcohol used in the manufacture of such products. (Note: Export drawback is not allowed for imported alcohol under this provision of customs law.) Claims for such export drawback shall be filed in accordance with the applicable regulations of the U.S. Customs Service. Such claims may cover either the full rate of tax which has been paid on the alcohol, if no nonbeverage drawback has been claimed thereon, or else the remainder of the tax if nonbeverage drawback under 26 U.S.C. 5134 has been or will be claimed.

### **§17.182 Drawback claims by druggists.**

Drawback of tax under 26 U.S.C. 5134 is allowable on taxpaid distilled spirits used in compounding prescriptions by druggists who have paid the special tax prescribed by 26 U.S.C. 5131. The prescriptions so compounded shall be shown in the supporting data by listing the first and last serial numbers thereof. The amount of taxpaid spirits used in each prescription need not be shown, but such prescriptions shall be made available for examination by appropriate ATF officers. If refills have been made of prescriptions received in a previous claim period, their serial numbers shall be recorded separately. Druggists claiming drawback as authorized by this section are subject to all the applicable requirements of this part, except those requiring the filing of quantitative formulas.

[T.D. ATF-379, 61 FR 31412, June 20, 1996 as amended by T.D. ATF-436, 66 FR 5470, Jan. 19, 2001]

### **§17.183 Disposition of recovered alcohol and material from which alcohol can be recovered.**

#### **(a) *Recovered alcohol.***

Manufacturers of nonbeverage products shall not sell or transfer recovered spirits to any other premises without ATF authorization under §17.3. If recovered spirits are stored pending reuse, storage facilities shall be adequate to protect the revenue. If recovered spirits are destroyed, the record required by §17.168(c) must be kept. Spirits recovered from intermediate products may be destroyed without notice to ATF. Spirits recovered from nonbeverage products may be destroyed pursuant to a notice filed with the regional director (compliance) at least 12 days prior to the date of destruction. The notice shall state the reason for the destruction, the intended date of destruction, and the approximate quantity involved. The regional director

(compliance) may impose specific conditions, including requiring that the destruction be witnessed by an appropriate ATF officer. Unless the manufacturer is otherwise advised by the regional director (compliance) before the date specified in the notice, the destruction may proceed as planned.

(b) *By-product material (general).*

By-product material from which alcohol can be recovered shall not be sold or transferred unless the alcohol has been removed or an approved substance has been added to prevent recovery of residual alcohol. Material from which alcohol can be recovered may also be destroyed on the manufacturer's premises by a suitable method. Except as provided in paragraph (c) of this section, prior written approval shall be obtained from the appropriate ATF officer as to the adequacy, under this section, of any substance proposed to be added to prevent recovery of alcohol, or of any proposed method of destruction.

(c) *Spent vanilla beans.*

Specific approval from the appropriate ATF officer is not required when spent vanilla beans containing residual alcohol are destroyed on the manufacturer's premises by burning, or when they are removed from those premises after treatment with sufficient kerosene, mineral spirits, rubber hydrocarbon solvent, or gasoline to prevent recovery of residual alcohol.

[T.D. ATF-379, 61 FR 31412, June 20, 1996 as amended by T.D. ATF-436, 66 FR 5470, Jan. 19, 2001]

### **§17.184 Distilled spirits container marks.**

All marks required by Part 19 of this chapter shall remain on containers of taxpaid distilled spirits until the contents are emptied. Whenever such a container is emptied, such marks shall be completely obliterated.

(Sec. 454, Pub. L. 98-369, 98 Stat. 820 (26 U.S.C. 5206(d)))

### **§17.185 Requirements for intermediate products and unfinished nonbeverage products.**

(a) *General.*

Self-manufactured ingredients made with taxpaid spirits may be accounted for either as intermediate products or as unfinished nonbeverage products. The manufacturer may choose either method of accounting for such self-manufactured ingredients (see §17.127). However, the method selected determines the requirements that will apply to those ingredients, as prescribed in paragraphs (b) and (c) of this section.

(b) *Intermediate products.*

Intermediate products shall be used exclusively in the manufacture of nonbeverage products. Intermediate products may be accumulated and stored indefinitely and may be used in any nonbeverage product whose formula calls for such use. Intermediate products shall be manufactured by the same entity that manufactures the finished nonbeverage products. Intermediate products shall not be sold or transferred between separate and distinct entities. However, they may be transferred to another branch or plant of the same manufacturer, for use there in the

manufacture of approved nonbeverage products. (See §17.169 for recordkeeping requirement.) For the purposes of this section, the phrase "separate and distinct entities" includes parent and subsidiary corporations, regardless of any corporate (or other) relationship, and even if the stock of both the manufacturing firm and the receiving firm is owned by the same persons.

(c) *Unfinished nonbeverage products.*

An unfinished nonbeverage product shall only be used in the particular nonbeverage product for which it was manufactured, and shall be entirely so used within the time limit stated in the approved ATF Form 5154.1. Spirits dissipated or recovered in the manufacture of unfinished nonbeverage products shall be regarded as having been dissipated or recovered in the manufacture of nonbeverage products. Spirits contained in such unfinished products shall be accounted for in the supporting data under §17.147 and inventoried under §17.167 as "in process" in nonbeverage products. Production of unfinished nonbeverage products shall be recorded as an integral part of the production records for the related nonbeverage products. Unfinished nonbeverage products shall not be transferred to other premises.

**§17.186 Transfer of distilled spirits to other containers.**

A manufacturer may transfer taxpaid distilled spirits from the original package to other containers at any time for the purpose of facilitating the manufacture of products unfit for beverage use. Containers into which distilled spirits have been transferred under this section shall bear a label identifying their contents as taxpaid distilled spirits, and shall be marked with the serial number of the original package from which the spirits were withdrawn.

**§17.187 Discontinuance of business.**

The manufacturer shall notify ATF when business is to be discontinued. Upon discontinuance of business, a manufacturer's entire stock of taxpaid distilled spirits on hand may be sold in a single sale without the necessity of qualifying as a wholesaler under part 1 of this chapter or paying special tax as a liquor dealer under part 194 of this chapter. The spirits likewise may be returned to the person from whom purchased, or they may be destroyed or given away.